

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division

**RESOLUTION UEB-001
August 24, 2006**

R E S O L U T I O N

**RESOLUTION UEB-001. Adoption of a citation program for
enforcing compliance with third party verification requirements
in Public Utilities Code Section 2889.5**

Background

On March 2, 2006, the Commission adopted Decision 06-03-013, Market Rules to Empower Telecommunications Consumers and to Prevent Market Fraud. In its decision, the Commission ordered the Director of Consumer Protection and Safety Division (CPSD) to investigate the feasibility and effectiveness of a citation forfeiture program for violations of the anti-slamming statutes. (Table A, D.06-03-013.)

Public Utilities Code Section 2889.5 contains procedures that utilities must follow to change a consumer's presubscribed telecommunications carrier. The Commission has on occasion delegated authority to its staff to enforce compliance with various regulatory requirements. This resolution adopts a citation program for enforcing compliance with third party verification requirements of Public Utilities Code Section 2889.5(a)(3) and (7) and Commission regulations applicable to this code section under the administration of the Director of CPSD. This citation program does not cover all violations that may occur subject to Public Utilities Code Section 2889.5, nor is it intended to.

DRAFT

Citations

The following procedures are adopted for the citation program:

1. The Director of CPSD, or a designated CPSD staff under the supervision of the Director, is hereby authorized to serve citations to telecommunications providers (respondents) subject to the requirements of Public Utilities Code Section 2889.5 for the following specified violations of those sections and applicable Commission regulations:
 - a. Failure by the telecommunications provider to provide to the Commission a third party verification tape (TPV) or other acceptable evidence (e.g., a letter of agency) showing that a change in telecommunications service provider has been made in compliance with Public Utilities Code Section 2889.5; or
 - b. Failure by the telecommunications provider to verify the specific information below:
 - i. the identity of the subscriber;
 - ii. confirmation that the person on the call is authorized to make the carrier change;
 - iii. confirmation that the person on the call wants to make the carrier change;
 - iv. the names of the carriers affected by the change (not including the name of the displaced carrier);
 - v. the telephone numbers to be switched; and
 - vi. the types of service involved.¹
2. The Director of CPSD or his/her designee is authorized to draft a citation and present it to the telecommunications provider that is the subject of a consumer complaint submitted to the Commission's Consumer Affairs Branch (CAB).² The citation will list the reasons for the citation; i.e., that CPSD has found that the carrier either did not provide a TPV (paragraph 1.a.)

¹ Code of Federal Regulations (47 CFR 64.1120(c)(3)(iii)).

² When CAB receives a consumer complaint, CAB notifies the subject carrier of the complaint and requests a copy of the TPV or other acceptable evidence of the consumer's intent to switch carriers.

DRAFT

or that the TPV failed to meet the required criteria (paragraph 1.b.). If CPSD receives a consumer complaint through other channels, at least 10 calendar days prior to issuing a citation, CPSD will provide written notice to the telecommunications provider that a citation will be issued and the basis therefor. The respondent will have at least 15 calendar days plus an additional 15 calendar days upon request to respond to the CPSD notice. If CPSD finds that the respondent has either failed to provide a TPV or other acceptable evidence, or to provide a TPV that meets the criteria, CPSD is hereby authorized to issue a citation and levy a \$1,000 fine consistent with the requirements set forth in Public Utilities Code Section 2107. Each TPV that fails to meet the criteria in paragraph 1.a. or 1.b. above is considered a separate violation. If violations at issue exceed \$20,000 per respondent in any 90 day period, or if a pattern of misconduct emerges, these violations or potential violations instead may be addressed by an Order Instituting Investigation, an Order to Show Cause, and/or other enforcement actions.

3. Each citation will be supported by evidence (documents, audio tapes, or other evidence) documenting any alleged violations. This information, if not voluminous, will be provided with the citation. If the evidence is voluminous, CPSD may summarize the evidence, but will make the evidence itself available for timely inspection by the respondent.
4. Within 45 calendar days from the date of the citation, the respondent must pay the fine or appeal the citation to the Director of CPSD. CPSD may allow for payment of citation fines in installments in appropriate cases.
5. Citations will be served by first class mail to the respondent's designated Commission contact or the address for the service of process of the corporation or LLC or other business entity filed with the Secretary of State of California. Citations must state the alleged violations and the fine amount and summarize CPSD's evidence.
6. The respondent may appeal the citation and request a hearing as detailed below. Citations must include an explanation of how to file an appeal, including an explanation of the respondent's right to have a hearing, to have a representative at the hearing, to request a transcript, to request an interpreter, and a form for requesting an interpreter.

DRAFT

Appeals

7. Appeals will be conducted as follows:
- a. The appeal must be brought by serving notice upon the Director of CPSD, and the respondent must explain the reasons for the appeal in the notice. Within 30 days of receipt of a timely Notice of Appeal, CPSD will, at its discretion, (a) withdraw a citation upon appeal where facts and circumstances warrant such action and provide a written notice of withdrawal to the carrier or (b) notify the Chief Administrative Law Judge of the Appeal ("CPSD Notice").
 - b. The Chief Administrative Law Judge will designate an Administrative Law Judge to hear appeals under this resolution.
 - c. Upon receipt of CPSD Notice, the Chief Administrative Law Judge will promptly forward the matter to the Administrative Law Judge, who will set the matter for hearing on the first Citation Calendar not less than 15 calendar days after receipt of CPSD Notice. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
 - d. Appeals of citations will be heard in the Commission's San Francisco or Los Angeles courtrooms on regularly scheduled days. Appeals will be calendared accordingly, except that a particular matter may be re-calendared at the direction of the Administrative Law Judge.
 - e. The respondent may order a transcript of the hearing, and must pay the cost of the transcript in accordance with the Commission's specified procedures.
 - f. Upon a good faith showing of language difficulty, the respondent will be entitled to the services of an interpreter at the Commission's expense upon written request to the Chief Administrative Law Judge not less than three business days prior to the date of the hearing.

DRAFT

- g. The respondent may be represented at the hearing by an attorney or other representative, but any such representation will be at the respondent's expense.
 - h. At an evidentiary hearing, CPSD bears the burden of proof. CPSD also bears the burden of producing evidence and accordingly will open and close. The Administrative Law Judge may, in his or her discretion to better ascertain truth, alter the order of presentation. Relevant and reliable evidence may be received in the discretion of the Administrative Law Judge. Although the technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved.³
 - i. Ordinarily, the case will be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period, not to exceed 30 calendar days, to permit a party to submit additional evidence or argument.
 - j. The Administrative Law Judge will issue a draft resolution that resolves the appeal not later than 45 days after the submission of the CPSD Notice, and the order will be placed on the first available agenda, consistent with the Commission's applicable rules.
 - k. A final Commission resolution is subject to the rehearing rights under Public Utilities Code Section 1731 and to judicial review under Public Utilities Code Section 1756.
 - l. The citation program does not affect a subscriber's right to file his or her own action pursuant to the Public Utilities Code.⁴
8. If the respondent fails to pay the full amount of the citation fine, to make arrangements for installment payments if permitted, or to appeal within 30 calendar days, CPSD may take action to have the Commission revoke the respondent's authority, and/or may take any other action provided by law to recover unpaid fines and ensure compliance with applicable statutes and

³ See Public Utilities Code Section 1701(a).

⁴ See e.g. Public Utilities Code Section 1702.1.

DRAFT

Commission regulations, including ordering the billing telephone company or companies that are providing billing and collection services to cease billing and collection services for the respondent pursuant to Public Utilities Code Section 2889.9(f).

9. From the date that CPSD issues a citation to and including the date when the final resolution is issued, the Commission's rules governing ex parte communications in adjudicatory proceedings will apply.
10. CPSD will review and report to the Executive Director on the citation program no later than 18 months after this resolution is adopted and every 24 months thereafter.
11. A copy of this Resolution will be sent to all telecommunications providers subject to requirements of Public Utilities Code Section 2889.5.

Notice

The Consumer Protection and Safety Division draft resolution in this matter was noticed in the Commission's Daily Calendar on July 27, 2006.

Comments

In compliance with PU Code § 311 (g), copies of the resolution were e-mailed on July 25, 2006, to all telecommunications carriers, the parties of record in R.00-02-004, for whom e-mail was available, informing these parties that this draft resolution is available at the Commission's website, www.cpuc.ca.gov and is available for public comments.

The Division of Ratepayer Advocates (DRA), Cox California Telcom, LLC dba Cox Communications, Verizon California, Inc., CTIA-The Wireless Association, and Small and Mid-Sized LECs submitted comments. We have carefully reviewed and considered these comments. To the extent that such comments required changes to the proposed resolution, the changes have been incorporated into the body of this resolution.

DRA recommended that CPSD involve the complaining consumer in reviewing the TPV and in the appeals process. We do not find consumer involvement necessary given the narrow procedures established for the citation program as

DRAFT

set out in paragraphs 1.a. and 1.b. above. We have incorporated language suggested by DRA in paragraph 2, above, clarifying that if CPSD finds a pattern of misconduct it will be addressed in an OII, OSC, or other enforcement action.

The Small and Mid-Sized LECs suggested using citations for egregious violations of verification procedures only. This is an inappropriate narrowing of the intent of this resolution, which is to adopt a citation program for enforcing compliance with third party verification requirements. The Small and Mid-Sized LECs also recommended that the citation be limited to unresolved CAB complaints. This limitation does not address the fact that while cases in CAB's informal complaint process may be resolved, underlying violations still exist and need to be addressed. This citation program is aimed at addressing the underlying violations.

Cox Communications stated that the Commission cannot delegate authority to perform discretionary acts to staff. We are well aware of the limitations on what acts may be delegated to staff. The delegation of authority to staff to issue citations in a well-defined and narrow program complies with our authority to delegate ministerial acts to staff.

DRAFT

THEREFORE, IT IS ORDERED that:

The Citation Program described above is hereby adopted.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 24, 2006. The following Commissioners approved it:

STEVE LARSON
Executive Director